



05 FEB 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

#5

Staas & Halsey LLP
700 11th Street, NW
Suite 500
Washington, DC 20001

In re Application of	:	
Reyzl et al.	:	DECISION
Application No.: 09/936,306	:	
PCT No.: PCT/DE00/00626	:	ON
Int. Filing Date: 01 March 2000	:	
Priority Date: 12 March 1999	:	PETITION
Attorney Docket No.: 1454.1094	:	
For: Program Monitoring Method And Device	:	

This is in response to applicant's "Petition To Revive Under 37 C.F.R. § 1.137(a)" filed on 01 July 2002, which is being treated under 37 CFR 1.182.

BACKGROUND

International application PCT/DE00/00626 was filed on 01 March 2000 and claimed an earliest priority date of 12 March 1999. The International Bureau transmitted a copy of the published international application to the USPTO on 21 September 2000. A Demand electing the United States was filed prior to the elapse of 19 months from the priority date. Consequently, the 30 month period for payment of the basic national fee in the United States expired as of midnight on 12 September 2001.

On 12 September 2001, applicant filed, *inter alia*, the basic national fee.

On 25 October 2001, a Notification Of Missing Requirements (Form PCT/DO/EO/905) was mailed to applicants, requiring the filing of an executed oath or declaration of the inventors in compliance with 37 CFR 1.497 (a) and (b) and a surcharge under 37 CFR 1.492(e).

On 29 May 2002, a Notification of Abandonment (Form PCT/DO/EO/909) was mailed to applicant, indicating that this international application had become abandoned with respect to the United States for failure to timely reply to the Notification Of Missing Requirements.

DISCUSSION

The papers filed on 01 July 2002 include a copy of a "Response To Notification Of Missing Requirements" transmittal letter, a copy of an executed declaration of the inventors, and a copy of a return postcard receipt itemizing *inter alia* the declaration and a check for \$130.00 and stamped as received by the USPTO on "Dec 03 2001." MPEP 503 states in part that "A postcard receipt which itemizes and properly identifies the papers which are being

filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO." Thus, the postcard stamped as received on 03 December 2001 constitutes *prima facie* evidence of receipt of the enumerated items on that date. A copy of the transmittal letter reveals that the papers were directed toward 09/936,305 and that the money paid by applicant (\$130.00) was placed in that application. The fee will be transferred to this application. Accordingly, the copy of the declaration filed on 01 July 2002 will be accepted as a copy of the declaration as filed on 03 December 2001, and the payment of the \$130.00 surcharge under 37 CFR 1.492(e) will be regarded as received on 03 December 2001. As applicant timely replied to the Notification Of Missing Requirements by filing the reply received on 03 December 2001, the Notification of Abandonment mailed on 29 May 2002 was inappropriate and is hereby **VACATED**.

DECISION

The petition is **GRANTED** under 37 CFR 1.181.

This application is being forwarded to the National Stage Processing Branch for further processing. The date of this application under 35 U.S.C. 371 is **03 December 2001**.



Richard Cole
PCT Legal Examiner
PCT Legal Office



George Dombroske
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6721
Fax: (703) 308-6459